

RESOLUTION NO. 40-2008

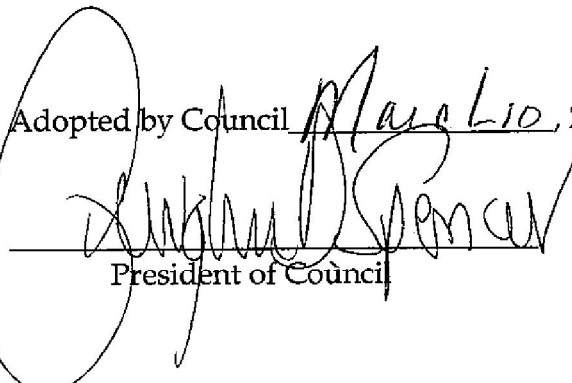
Whereas, the City of Reading has received a certain services proposal from Honeywell International Inc. for cost savings; and

Whereas, the City of Reading desires to contract with Honeywell International Inc. for an energy savings project ; now therefore,

The Council of the City of Reading hereby resolves as follows:

That Mayor Thomas M. McMahon be authorized to execute any and all necessary documents for a energy savings project including, but not limited to, a certain contractual agreement between Honeywell International Inc. and the City of Reading (see attached Exhibit).

Adopted by Council March 10, 2008



President of Council

Attest:



City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Resolution passed by the Council of the City of Reading, on the 10th day of March A. D. 20 08. Witness my hand and seal of the said City this 11th day of March A. D. 20 08.



CITY CLERK

**HONEYWELL
AGREEMENT**

CUSTOMER NAME:
HONEYWELL PROPOSAL NUMBER:
DATE OF SUBMISSION:
VALIDITY PERIOD:

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Note Regarding Modifications Made to this Agreement: Provisions in the printed document that are not to be included in the agreement may be deleted by striking through the word, sentence or paragraph to be omitted. It is recommended that unwanted provisions not be made illegible. The parties should be clearly aware of the material deleted from the standard form. **Do not make any modifications to this Agreement unless approval to do so has been granted. Changes may be made only by deletion as explained above, or, by addendum.**

ARTICLE 1
GENERAL PROVISIONS

1.1 This Agreement, including all Attachments, Exhibits, and Schedules referenced herein (hereinafter the "Agreement") is made this _____ day of _____, 200__ (the "Effective Date") by and between Honeywell International Inc. ("HONEYWELL"), a Delaware Corporation, acting through its Automation and Control Solutions business unit, with a principal place of business at 101 Columbia Road, Morristown, New Jersey 07962-1057, and

("CUSTOMER") with a principal place of business at _____

(collectively the "Parties").

1.2 **EXTENT OF AGREEMENT:** This Agreement, including all attachments and exhibits hereto, represents the entire agreement between CUSTOMER and HONEYWELL and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both CUSTOMER and HONEYWELL. None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order issued by CUSTOMER, which relates to the subject matter of this Agreement.

1.3 As used in this Agreement, the term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by HONEYWELL to fulfill HONEYWELL's obligations, as described in Attachment A and otherwise set forth in the Contract Documents. The Work may constitute the whole or a part of the Project. The Work specifically excludes certain design and construction, which are the subject of separate agreements between CUSTOMER and parties other than HONEYWELL.

1.4 The Project is the total construction of which the Work performed by HONEYWELL under this Agreement may be the whole or a part.

1.5 The Contract Documents consist of this Agreement, its attachments, exhibits, schedules, and addenda.

1.6 Support Services means those services and obligations to be undertaken by HONEYWELL in support of CUSTOMER as set forth in Attachment D.

1.7 Installation Schedule means that schedule set out in Attachment C describing the Parties' intentions respecting the times by which the components or aspects of

the Work therein set forth shall be installed and/or ready for acceptance or beneficial use by CUSTOMER.

ARTICLE 2
HONEYWELL'S RESPONSIBILITIES

2.1 HONEYWELL Services

2.1.1 HONEYWELL shall be responsible for construction of the Project.

2.1.2 HONEYWELL will assist CUSTOMER in securing permits necessary for the Work.

2.2 Responsibilities with Respect to the Work

2.2.1 HONEYWELL will provide construction supervision, inspection, labor, materials, tools, construction equipment and subcontracted items necessary for the execution and completion of the Work.

2.2.2 HONEYWELL shall keep the premises in an orderly fashion and free from unnecessary accumulation of waste materials or rubbish caused by its operations. If HONEYWELL damages property not needed for the Work, HONEYWELL shall repair the property to its pre-existing condition unless CUSTOMER directs otherwise. At the completion of the Work, HONEYWELL shall remove waste material supplied by HONEYWELL under this Agreement as well as all its tools, construction equipment, machinery and surplus material. HONEYWELL shall dispose of all waste materials or rubbish caused by its operations; provided, that unless otherwise specifically agreed to in this Agreement, HONEYWELL shall not be responsible for disposal of toxic or hazardous materials removed from the facilities. HONEYWELL shall be responsible for disposal of fluorescent lights, potential polychlorinated biphenyl containing light ballasts and mercury containing controls to the extent their replacement is specified in Attachment A.

2.2.3 HONEYWELL shall give all notices and comply with all laws and ordinances legally enacted as of the date of execution of the Agreement governing the execution of the Work. Provided, however, that HONEYWELL shall not be responsible nor liable for the violation of any code, law or ordinance caused by CUSTOMER or existing in CUSTOMER's property prior to the commencement of the Work.

2.2.4 HONEYWELL shall comply with all applicable federal, state and municipal laws and regulations that regulate the health and safety of its workers while providing the Work, and shall take such measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to the site of the Work. It is understood and agreed, however, that HONEYWELL shall have no responsibility for elimination or abatement of health or safety hazards

created or otherwise resulting from activities at the site of the Work carried on by persons not in a contractual relationship with HONEYWELL, including CUSTOMER, CUSTOMER's contractors or subcontractors, CUSTOMER's tenants or CUSTOMER's visitors. CUSTOMER agrees to cause its contractors, subcontractors and tenants to comply fully with all applicable federal, state and municipal laws and regulations governing health and safety and to comply with all reasonable requests and directions of HONEYWELL for the elimination or abatement of any such health or safety hazards at the site of the work.

2.3 Patent Indemnity

2.3.1 HONEYWELL shall, at its expense, defend or, at its option, settle any suit that may be instituted against CUSTOMER for alleged infringement of any United States patents related to the hardware manufactured and provided by HONEYWELL, provided that: 1. Such alleged infringement consists only in the use of such hardware by itself and not as part of, or in combination with, any other devices, parts or software not provided by HONEYWELL hereunder; 2. CUSTOMER gives HONEYWELL immediate notice in writing of any such suit and permits HONEYWELL, through counsel of its choice, to answer the charge of infringement and defend such suit; and 3. CUSTOMER gives HONEYWELL all needed information, assistance and authority, at HONEYWELL's expense, to enable HONEYWELL to defend such suit.

2.3.2 If such a suit has occurred, or in HONEYWELL's opinion is likely to occur, HONEYWELL may, at its election and expense: obtain for CUSTOMER the right to continue using such equipment; or replace, correct or modify it so that it is not infringing; or remove such equipment and grant CUSTOMER a credit therefore, as depreciated.

2.3.3 In the case of a final award of damages in any such suit, HONEYWELL will pay such award. HONEYWELL shall not, however, be responsible for any settlement made without its written consent.

2.3.4 THIS ARTICLE STATES HONEYWELL'S TOTAL LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT BY THE HARDWARE MANUFACTURED AND PROVIDED BY HONEYWELL HEREUNDER. IN NO EVENT SHALL HONEYWELL BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY SUCH ACTUAL OR ALLEGED INFRINGEMENT, EXCEPT AS SET FORTH IN THIS SECTION 2.3.

2.4 Warranties and Completion

2.4.1 HONEYWELL warrants CUSTOMER good and clear title to all equipment and materials furnished to

CUSTOMER pursuant to this Agreement (except licensed software, which shall be governed exclusively by the terms and conditions of the Software License Agreement, attached hereto as Attachment B), free and clear of liens and encumbrances. HONEYWELL hereby warrants that all such equipment and materials shall be of good quality and shall be free from defects in materials and workmanship, including installation and setup, for a period of one (1) year from the date of beneficial use or substantial completion of the equipment or portion of the Work in question, provided that no repairs, substitutions, modifications, or additions have been made, except by HONEYWELL or with HONEYWELL's written permission, and provided that after delivery such equipment or materials have not been subjected by non-HONEYWELL personnel to accident, neglect, misuse, or use in violation of any instructions supplied by HONEYWELL. HONEYWELL's sole liability hereunder shall be to repair promptly or replace defective equipment or materials, at HONEYWELL's option and at HONEYWELL's expense. The limited warranty contained in this Section 2.4.1 shall constitute the exclusive remedy of CUSTOMER and the exclusive liability of HONEYWELL for any breach of any warranty related to the equipment and materials furnished by HONEYWELL pursuant to this Agreement.

2.4.2 In addition to the warranty set forth in Section 2.4.1 above, HONEYWELL shall, at CUSTOMER's request, assign to CUSTOMER any and all manufacturer's or installer's warranties for equipment or materials not manufactured by HONEYWELL and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the one (1) year limited warranty set forth in Section 2.4.1.

2.4.3 THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE, AND HONEYWELL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT AND MATERIALS PROVIDED HEREUNDER. HONEYWELL SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM, OR RELATING TO, THIS LIMITED WARRANTY OR ITS BREACH.

ARTICLE 3 **CUSTOMER'S RESPONSIBILITIES**

3.1 CUSTOMER shall provide HONEYWELL full information regarding the requirements for the Work.

3.2 CUSTOMER shall designate a representative who shall be fully acquainted with the Work, and who has authority to approve changes in the scope of the Work and render decisions promptly.

3.3 CUSTOMER shall furnish to HONEYWELL all information regarding legal limitations, utility locations and other information reasonably pertinent to this Agreement, the Work and the Project.

3.4 CUSTOMER shall secure and pay for all necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including charges for legal and auditing services.

3.5 If CUSTOMER becomes aware of any fault or defect in the Work, it shall give prompt written notice thereof to HONEYWELL.

3.6 The services and information required by the above paragraphs shall be furnished with reasonable promptness at CUSTOMER's expense and HONEYWELL shall be entitled to rely upon the accuracy and the completeness thereof.

3.7 Prior to the commencement of the Work and at such future times as HONEYWELL shall reasonably deem appropriate, CUSTOMER shall furnish evidence in a form satisfactory to HONEYWELL that sufficient funds are available and committed to pay for the Work. Unless such evidence is furnished, HONEYWELL is not required to commence or continue any Work. Further, if CUSTOMER does not provide such evidence, HONEYWELL may stop work upon fifteen (15) days notice to CUSTOMER. The failure of HONEYWELL to insist upon the providing of this evidence at any one time shall not be a waiver of CUSTOMER's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of HONEYWELL's right to request or insist that such evidence be provided at a later date.

3.8 HAZARDOUS SUBSTANCES, MOLD AND UNSAFE WORKING CONDITIONS

3.8.1 "Hazardous substance" includes all of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site, or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, and (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health, habitability of a Site, or the environment.

3.8.2 "Mold" means any type or form of fungus or biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing. This includes any related or any such conditions caused by third parties.

3.8.3 "Covered Equipment" means the equipment covered by the Services to be performed by HONEYWELL under this Agreement, and is limited to the equipment included in the respective work scope attachments.

3.8.4 CUSTOMER has not observed or received notice from any source (formal or informal) of (a) Hazardous Substances or Mold, either airborne or on or within the walls, floors, ceilings, heating, ventilation and air conditioning systems, plumbing systems, structure, and other components of the Site, or within furniture, fixtures, equipment, containers or pipelines in a Site; or (b) conditions that, to CUSTOMER'S knowledge, might cause or promote accumulation, concentration, growth or dispersion of Hazardous Substances or Mold on or within such locations.

3.8.5 HONEYWELL is not responsible for determining whether the Covered Equipment or the temperature, humidity and ventilation settings used by CUSTOMER, are appropriate for CUSTOMER and the Site except as specifically provided in an attached Work Scope Document.

3.8.6 If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by HONEYWELL or others and provide an unsafe condition for the performance of the work or Services, the discovery of the condition shall constitute a cause beyond HONEYWELL'S reasonable control and HONEYWELL shall have the right to cease the work or Services until the area has been made safe by CUSTOMER or CUSTOMER'S representative, at CUSTOMER'S expense. HONEYWELL shall have the right to terminate this Agreement if CUSTOMER has not fully remediated the unsafe condition within sixty (60) days of discovery.

3.8.7 CUSTOMER represents that CUSTOMER has not retained HONEYWELL to discover, inspect, investigate, identify, prevent or remediate Hazardous Substances or Mold or conditions caused by Hazardous Substances or Mold.

3.8.8 TO THE FULLEST EXTENT ALLOWED BY LAW, CUSTOMER SHALL INDEMNIFY AND HOLD HONEYWELL HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES, DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES,

CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER THE BREACH OF THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION THE EXISTENCE OF MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, OR THE OCCURRENCE OR EXISTENCE OF THE SITUATIONS OR CONDITIONS DESCRIBED IN THIS SECTION, WHETHER OR NOT CUSTOMER PROVIDES HONEYWELL ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS. THIS INDEMNIFICATION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

3.9 In addition to the price set forth in Article 6 of this Agreement, CUSTOMER shall pay any present and future taxes or any other governmental charges now or hereafter imposed by existing or future laws with respect to the sale, transfer, use, ownership or possession of the Work or any Support Services provided hereunder, excluding taxes on Honeywell's net income.

3.10 CUSTOMER shall execute a software license in the form of the Software License Agreement attached hereto as Attachment B. Failure of CUSTOMER to execute such Software License Agreement shall excuse HONEYWELL from any delivery requirements pursuant to this Agreement and shall be considered a material breach by CUSTOMER.

ARTICLE 4 **SUBCONTRACTS**

4.1 At its exclusive option, HONEYWELL may subcontract some or all of the Work or Support Services.

4.2 A Subcontractor is a person or entity who has a direct contract with HONEYWELL to perform any effort in connection with the Work. The term Subcontractor does NOT include any separate contractors employed by CUSTOMER or such separate contractors' subcontractors.

4.3 For the purposes of this Agreement, no contractual relationship shall exist between CUSTOMER and any Subcontractor. HONEYWELL shall be responsible for the management of its Subcontractors in their performance of their Work.

ARTICLE 5 **INSTALLATION AND ACCEPTANCE**

5.1 The Work to be performed under this Agreement shall be commenced and substantially completed as set forth in the Installation Schedule attached hereto as Attachment C.

5.2 If HONEYWELL is delayed at any time in the progress of performing its obligations under this Agreement by any act of CUSTOMER or any contractor employed by CUSTOMER; or by changes ordered or requested by CUSTOMER in the Work performed pursuant to this Agreement; or by labor disputes, fire, unusual delay in transportation, adverse weather conditions or other events or occurrences which could not be reasonably anticipated; or unavoidable casualties; or any other problem beyond HONEYWELL's reasonable control (an "Excusable Delay"), then the time for performance of the obligations affected by such Excusable Delay shall be extended by the period of any delay actually incurred as a result thereof. If any delay, or cumulative delays, within CUSTOMER's control, extends beyond ten (10) days, CUSTOMER shall reimburse HONEYWELL for all additional costs resulting therefrom.

5.3 HONEYWELL shall provide Delivery and Acceptance Certificates in a form acceptable to CUSTOMER and HONEYWELL (the "Delivery and Acceptance Certificates") for the Work provided pursuant to the Schedule identified in attachment J. Upon receipt of each Delivery and Acceptance Certificate, CUSTOMER shall promptly inspect the Work performed by HONEYWELL identified therein and execute each such Delivery and Acceptance Certificate as soon as reasonably possible, but in no event later than ten (10) days after delivery of the same by HONEYWELL, unless CUSTOMER provides HONEYWELL with a written statement identifying specific material performance deficiencies that it wishes HONEYWELL to correct. HONEYWELL will use reasonably diligent efforts to correct all such material deficiencies and will give written notice to CUSTOMER when all such items have been corrected. The Parties intend that a final Delivery and Acceptance Certificate will be executed for the Work as soon as all Work is installed and operating. Execution and delivery by CUSTOMER of such final Delivery and Acceptance Certificate with respect to the Work shall constitute "Final Acceptance" of such Work performed by HONEYWELL pursuant to the Installation Schedule.

ARTICLE 6 **PRICE AND PAYMENT**

6.1 Price

6.1.1 The price for the Work is _____ Dollars (\$ _____), subject to the adjustments set forth in Articles 5 and 7.

6.1.2 The total price for Support Services is set forth in Attachment D hereto, subject to the adjustments described therein.

6.1.3 The price is based upon laws, codes and regulations in existence as of the date this Agreement is executed. Any changes in or to applicable laws, codes and regulations affecting the cost of the Work shall be the responsibility of CUSTOMER and shall entitle HONEYWELL to an equitable adjustment in the price and schedule.

6.1.4 The price will be modified for delays caused by CUSTOMER and for Changes in the Work, all pursuant to Article 7.

6.1.5 The license fees for all licensed software identified in Attachment B are included in the price to be paid by CUSTOMER as identified in this Article 6.

6.2 Payment

6.2.1 Upon execution of this Agreement, CUSTOMER shall pay or cause to be paid to HONEYWELL the full price for the Work in accordance with the Payment Schedule, Attachment E. CUSTOMER shall make payments for the Support Services in accordance with Attachment D.

6.2.2 Payments for the Work past due more than five (5) days shall accrue interest from the due date to the date of payment at the rate of one and one half percent (1.5%) per month, compounded monthly, or the highest legal rate then allowed. CUSTOMER shall pay all attorney and/or collection fees incurred by HONEYWELL in collecting any past due amounts.

ARTICLE 7 **CHANGES IN THE PROJECT**

7.1 A Change Order is a written order signed by CUSTOMER and HONEYWELL authorizing a change in the Work or adjustment in the price, or a change to the Installation Schedule described in Attachment C.

7.2 CUSTOMER may request HONEYWELL to submit proposals for changes in the Work. Unless otherwise specifically agreed to in writing by both parties, if HONEYWELL submits a proposal pursuant to such request but CUSTOMER chooses not to proceed, CUSTOMER shall issue a Change Order to reimburse HONEYWELL for any and all costs incurred in preparing the proposal.

7.3 Claims for Concealed or Unknown Conditions

If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an

unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions, and, if appropriate, an equitable adjustment to the Contract Price and Installation Schedule shall be made by a Change Order. If agreement cannot be reached by the Parties, the party seeking an adjustment in the Price or Installation Schedule may assert a claim in accordance with Paragraph 7.4.

7.4 If HONEYWELL wishes to make a claim for an increase in the Price or an extension in the Installation Schedule it shall give CUSTOMER written notice thereof within a reasonable time after the occurrence of the event giving rise to such claim. This notice shall be given by HONEYWELL before proceeding to execute the Work, except in an emergency endangering life or property, in which case HONEYWELL shall have the authority to act, in its discretion, to prevent threatened damage, injury or loss. Claims arising from delay shall be made within a reasonable time after the delay. Increases based upon design and estimating costs with respect to possible changes requested by CUSTOMER shall be made within a reasonable time after the decision is made not to proceed with the change. No such claim shall be valid unless so made. If CUSTOMER and HONEYWELL cannot agree on the amount of the adjustment in the Price, or the Installation Schedule, it shall be determined pursuant to the provisions of Article 12. Any change in the Price or the Installation Schedule resulting from such claim shall be authorized by Change Order.

7.5 Emergencies

In any emergency affecting the safety of persons or property, HONEYWELL shall act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the Price or extension of time claimed by HONEYWELL on account of emergency work shall be determined as provided in Section 7.4.

ARTICLE 8 **INSURANCE, INDEMNITY, WAIVER OF** **SUBROGATION, AND LIMITATION OF** **LIABILITY**

8.1 Indemnity

8.1.1 HONEYWELL agrees to indemnify and hold CUSTOMER, and CUSTOMER's consultants, agents and employees harmless from all claims for bodily injury and property damages [other than the Work itself and other property insured under Paragraph 8.4] to the extent such

claims result from or arise under HONEYWELL's negligent actions or willful misconduct in its performance of the Work or the Support Services. **PROVIDED THAT, NOTHING IN THIS ARTICLE SHALL BE CONSTRUED OR UNDERSTOOD TO ALTER THE LIMITATIONS OF LIABILITY CONTAINED IN THIS ARTICLE, ARTICLE 2, OR THE INDEMNIFICATION CONTAINED IN SECTION 3.8.**

8.1.2 CUSTOMER shall indemnify and hold harmless HONEYWELL and HONEYWELL's consultants, agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, or resulting from, any act or omission of CUSTOMER or CUSTOMER's contractors, consultants, agents or employees.

8.1.3 CUSTOMER shall require any other contractor who may have a contract on this project with CUSTOMER to perform work in the areas where Work will be performed under this Agreement to agree to indemnify CUSTOMER and HONEYWELL and hold them harmless from all claims for bodily injury and property damage [other than property insured under Paragraph 8.4] that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to HONEYWELL.

8.2 Contractor's Liability Insurance

HONEYWELL shall, at its own expense, carry and maintain in force at all times from the effective date of the Contract through final completion of the work the following insurance. Honeywell will not issue coverage on a per project basis. It is agreed, however, that HONEYWELL has the right to insure or self-insure any of the insurance coverages listed below:

(a) Commercial General Liability Insurance to include contractual liability, products/completed operations liability with a combined single limit of USD \$5,000,000 per occurrence. Such policy will be written on an occurrence form basis;

(b) If automobiles are used in the execution of the Contract, Automobile Liability Insurance with a minimum combined single limit of USD \$5,000,000 per occurrence. Coverage will include all owned, leased, non-owned and hired vehicles.

(c) Where applicable, "All Risk" Property Insurance, including Builder's Risk insurance, for physical damage to property which is assumed in the Contract.

(d) Workers' Compensation Insurance Coverage A - Statutory limits and Coverage B-Employer's Liability Insurance with limits of USD \$1,000,000 for bodily injury each accident or disease.

8.2.1 Prior to the commencement of the Contract, HONEYWELL will furnish evidence of said insurance coverage in the form of a Memorandum of Insurance which is accessible at: <http://places.honeywell.com/moi>. All insurance required in this Article will be written by companies with a rating of no less than "A-, XII" by A.M.

Best or equivalent rating agency. HONEYWELL will endeavor to provide a thirty (30) day notice of cancellation or non-renewal to the Customer. In the event that a self-insured program is implemented, HONEYWELL will provide adequate proof of financial responsibility.

8.3. CUSTOMER's Liability Insurance

8.3.1 CUSTOMER shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims that may arise from operations under this Agreement.

8.4 Insurance to Protect Project

8.4.1 CUSTOMER shall purchase and maintain all risk full cost replacement property insurance in a form acceptable to HONEYWELL for the length of time to complete the Project. This insurance shall include as named additional insureds HONEYWELL and HONEYWELL's Subcontractors and Sub-subcontractors and shall include, at a minimum, coverage for fire, windstorm, flood, earthquake, theft, vandalism, malicious mischief, transit, collapse, testing, and damage resulting from defective design, workmanship, or material. CUSTOMER will increase limits of coverage, if necessary, to reflect estimated replacement costs. CUSTOMER will be responsible for any co-insurance penalties or deductibles. If the Work covers an addition to or is adjacent to an existing building, HONEYWELL and its Subcontractors and Sub-subcontractors shall be named additional insureds under CUSTOMER's Property Insurance covering such building and its contents.

8.4.1.1 If CUSTOMER finds it necessary to occupy or use a portion or portions of the Facilities prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by CUSTOMER and HONEYWELL and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of HONEYWELL and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

8.4.2 CUSTOMER shall purchase and maintain such insurance as will protect CUSTOMER and HONEYWELL against loss of use of CUSTOMER's property due to those perils insured pursuant to Subparagraph 8.4.1. Such policy will provide coverage for expenses of expediting materials, continuing overhead of CUSTOMER and HONEYWELL, necessary labor expense including overtime, loss of income by CUSTOMER and other determined exposures. Exposures of CUSTOMER and HONEYWELL shall be determined by mutual agreement and separate limits of coverage fixed for each item.

8.4.3 CUSTOMER shall provide evidence of Insurance to HONEYWELL before work on the Project begins. All insurance coverage(s) must be with a carrier rated A- or better by one of the National Insurance Rating Agencies such as A.M. Best. HONEYWELL will be given thirty (30) days notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

8.5 Property Insurance Loss Adjustment

8.5.1 Any insured loss shall be adjusted with CUSTOMER and HONEYWELL and made payable to CUSTOMER and HONEYWELL as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

8.5.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with an arbitration award pursuant to Article 12. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted to arbitration pursuant to Article 12.

8.6 Limitation of Liability

8.6.1 IN NO EVENT SHALL HONEYWELL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, MOLD, MOISTURE OR INDOOR AIR QUALITY, OR OTHERWISE, ARISING FROM, RELATING TO, OR CONNECTED WITH THE WORK, SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS PROVIDED HEREUNDER.

ARTICLE 9

TERMINATION OF THE AGREEMENT

9.1 If HONEYWELL defaults in, or fails or neglects to carry forward the Work in accordance with this Agreement, CUSTOMER may provide notice in writing of its intention to terminate this Agreement to HONEYWELL. If HONEYWELL, following receipt of such written notice, neglects to cure or correct the identified deficiencies within thirty (30) business days, CUSTOMER may provide a second written notice. If HONEYWELL has not, within thirty (30) business days after receipt of such notice, acted to remedy and make good such deficiencies, CUSTOMER may terminate this Agreement and take possession of the site together with all materials thereon, and move to complete the Work itself expeditiously. If the unpaid balance of the contract sum exceeds the expense of finishing the Work, the excess shall

be paid to HONEYWELL, but if the expense exceeds the unpaid balance, HONEYWELL shall pay the difference to CUSTOMER.

9.2 If CUSTOMER fails to make payments as they become due, or otherwise defaults or breaches its obligations under this Agreement, HONEYWELL may give written notice to CUSTOMER of HONEYWELL's intention to terminate this Agreement. If, within seven (7) days following receipt of such notice, CUSTOMER fails to make the payments then due, or otherwise fails to cure or perform its obligations, HONEYWELL may, by written notice to CUSTOMER, terminate this Agreement and recover from CUSTOMER payment for Work executed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable profit and applicable damages.

ARTICLE 10

ASSIGNMENT AND GOVERNING LAW

10.1 This Agreement shall be governed by the law of the State where the Work is performed.

10.2 Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other party. Such consent shall not be reasonably withheld, except that HONEYWELL may assign to another party the right to receive payments due under this Agreement. HONEYWELL may enter into subcontracts for the Work without obtaining CUSTOMER's consent.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 The Table of Contents and headings in this Agreement are for information and convenience only and do not modify the obligations of this Agreement.

11.2 **Confidentiality.** As used herein, the term "CONFIDENTIAL INFORMATION" shall mean any information in readable form or in machine-readable form, including software supplied to CUSTOMER by HONEYWELL, that has been identified or labeled as "Confidential" and/or "Proprietary" or with words of similar import. CONFIDENTIAL INFORMATION shall also mean any information that is disclosed orally and is designated as "Confidential" and/or "Proprietary" or with words of similar import at the time of disclosure and is reduced to writing, marked as "Confidential" and/or "Proprietary" or with words of similar import, and supplied to the receiving party within ten (10) days of disclosure.

All rights in and to CONFIDENTIAL INFORMATION and to any proprietary and/or novel features contained in CONFIDENTIAL INFORMATION disclosed are reserved by the disclosing party; and the party receiving such disclosure will not use the CONFIDENTIAL INFORMATION for any purpose except in the performance of this Agreement and will not disclose any of

the CONFIDENTIAL INFORMATION to benefit itself or to damage the disclosing party. This prohibition includes any business information (strategic plans, etc.) that may become known to either party.

Each party shall, upon request of the other party or upon completion or earlier termination of this Agreement, return the other party's CONFIDENTIAL INFORMATION and all copies thereof.

Notwithstanding the foregoing provisions, neither party shall be liable for any disclosure or use of information disclosed or communicated by the other party if the information:

- (a) is publicly available at the time of disclosure or later becomes publicly available other than through breach of this Agreement; or
- (b) is known to the receiving party at the time of disclosure; or
- (c) is subsequently rightfully obtained from a third party on an unrestricted basis; or
- (d) is approved for release in writing by an authorized representative of the disclosing party.

The obligation of this Article shall survive any expiration, cancellation or termination of this Agreement.

11.3 If any provision is held illegal, invalid or unenforceable, the remaining provisions of this Agreement shall be construed and interpreted to achieve the purposes of the Parties.

11.4 Risk of loss for all equipment and materials provided by HONEYWELL hereunder shall transfer to CUSTOMER upon delivery to CUSTOMER's Facilities from HONEYWELL or its Subcontractor and title shall pass upon final acceptance or final payment by CUSTOMER to HONEYWELL, whichever occurs later.

11.5 Final notice or other communications required or permitted hereunder shall be sufficiently given if personally delivered to the person specified below, or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To HONEYWELL:

HONEYWELL INTERNATIONAL INC.

Attention:

To CUSTOMER:

Attention: _____

11.6 Waiver. HONEYWELL's failure to insist upon the performance or fulfillment of any of CUSTOMER's

obligations under this Agreement shall not be deemed or construed as a waiver or relinquishment of the future performance of any such right or obligation hereunder.

11.7 If any provision of this Agreement or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected hereby and shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 12
ARBITRATION

12.1 With the exception of any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of fire and/or security systems, the Parties agree that any controversy or claim between HONEYWELL and CUSTOMER arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in a neutral venue, conducted in accordance

with the Construction Industry Arbitration Rules of the American Arbitration Association.

Any award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of systems associated with security and/or the detection of, and/or reduction of risk of loss associated with fire shall be resolved in a court of competent jurisdiction.

APPROVALS:

The parties hereby execute this Agreement as of the date first set forth herein by the signatures of their duly authorized representatives:

HONEYWELL INTERNATIONAL INC.

By _____
Name _____
Title _____
Date _____

By _____
Name _____
Title _____
Date _____

ATTACHMENT A SCOPE OF WORK

PART 1 – PRODUCTS & EXECUTION

- A. xxxxxxx
- 1. xxxxxxx
- B. xxxxxxx
- 1. xxxxxxxxxxxx.

PART 2 – GENERAL

A. GENERAL CONDITIONS

1. Honeywell is not responsible for bringing existing lighting/electrical systems up to code.
2. A five (5) year ballast warranty will be provided by the ballast manufacturer and a one (1) year lamp warranty will be provided by the lamp manufacturer. The five (5) year warranty on the ballasts operates by the Customer sending the old ballasts back to the manufacturer and in return a new ballast will be provided to be installed by the Customer's work force.
3. If Honeywell encounters any materials or substances classified as toxic or hazardous in performance of the Work associated with the mechanical systems, including asbestos, Honeywell will notify Customer and will stop work in that area until such area has been made safe by the Customer, or Customer's Representative, at Customer's expense. In the event such conditions cause a delay in Honeywell's performance, Honeywell shall be entitled to recovery of all costs associated with such delay, as well as an extension of time of performance.
4. Where demolition of certain areas of a building are required for removal and installation of equipment and that demolition is included in the scope of work defined herein, Honeywell will make every effort to replace such areas with similar materials as available. If such materials are not available, materials of similar quality will be supplied and installed.
5. Electrical: Should a problem with the existing wiring system occur, Honeywell will be limited to electrical wiring modifications (repairs) to three feet (36 inches) of the device or the nearest wall or ceiling penetrating, whichever is smaller.
6. Piping: Should a problem with the existing piping system occur, Honeywell will be limited to piping modifications (repairs) to two feet (24 inches) of the device installed or the nearest wall or ceiling penetration, whichever is smaller. Piping includes but is not limited to domestic hot and cold water, cooling cold water, heating hot water, condensate, fuel oil, and cooling tower condensing water.
7. Routine Clean-up: Routine clean up such as vacuuming, coil cleaning and filter change of air handling devices, etc. is the responsibility of the Customer, or as included in Attachment D,
8. Utility Meter: If new utility meters are required, provision and coordination of utility meters is the responsibility of the customer.
9. Phone Lines: To be provided by customer for off-site monitoring, two (2) lines for each front end, one (1) line for each separate remote bus, as well as on-going maintenance of the lines.
10. Efficiency Values: Honeywell will install equipment and lighting components (hereto referred as "equipment") under the scope described herein with specific energy and water efficiency values. The customer is required to replace any failed "equipment" no longer warranted by Honeywell or a Honeywell subcontractor, with "equipment" of equal or greater efficiency for the full contract guarantee term.
11. Limitation of Liability – Security Systems, Fire Alarm Systems and/or Components - Honeywell's total liability for damages of any kind or nature arising out of or relating to any aspect or component of the security or fire alarm systems and/or components provided under this Agreement is limited to \$_____.

12. Honeywell will provide information necessary to apply for utility incentives. Actual dollar amount of incentive will be determined by the Utility and is not guaranteed by Honeywell.
13. The following areas are specifically excluded from this proposal. Correction of problems in these areas, if required by Federal, State or local law or ordinance, will be considered additional work and will be chargeable (with approval) to the Owner.
 - a. Any work not specifically stated and outlined in this scope of work.
 - b. Painting and patching of areas beyond those areas directly related to work.
 - c. Existing non-code conditions (examples: existing electrical wiring which requires correction or approval by appropriate inspectors, existing penetrations in need of fire stopping, etc).

B. RELATED WORK SPECIFIED ELSEWHERE

Provision of equipment, material, and labor to provide functional measurement and verification systems coordinated under Attachment G – Schedule of Savings.

ATTACHMENT B
SOFTWARE LICENSE AGREEMENT

BRANCH _____

Re: Honeywell International, Inc. Software License Agreement

Designated Installation:

Dear Customer:

Your new building management system requires the use of the software listed in the Software Product Schedule. In accordance with the usual practice in the industry, this software, related materials, and any updates or revisions, are protected by copyright and trade secret law, and may be protected by patent law.

You may use the software with the equipment being provided by Honeywell at the Designated Installation. You may (for archival or backup purposes) make up to three (3) copies of noncopy protected software on disk or magnetic tape and one (1) copy of the software in printed form.

The software is proprietary to, and title to the software remains in, Honeywell and its vendor(s). You agree: (1) to take reasonable steps to maintain Honeywell's and its vendors' rights in the software; (2) not to sell, transfer, publish, display, disclose or make the software or any copies available to others, except to its affiliates and successors, and to the transferees of the equipment to which this license pertains; and (3) not to reverse compile, disassemble or otherwise reverse engineer the software. All rights in patents, copyrights, trademarks, and trade secrets are retained by Honeywell and its vendors. Any attempt to transfer, assign, or sublicense this Agreement or the software is null and void, except to its affiliates and successors, and to the transferees of the equipment to which this license pertains. Upon termination of this license you will immediately return the software to Honeywell. Termination will not cancel your obligations under this agreement.

If, for a period of one (1) year, the software does not meet Honeywell specifications, then Honeywell, at its option, shall repair or replace the software. Honeywell represents and warrants that it has the right to provide the software and to grant the licenses granted herein.

IN NO EVENT SHALL YOU OR HONEYWELL OR ITS VENDORS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR WARRANTY. NEITHER HONEYWELL NOR ITS VENDORS SHALL BE LIABLE FOR ANY WARRANTIES IMPLIED BY LAW OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO ANY SOFTWARE SUPPLIED PURSUANT TO THIS AGREEMENT.

Please indicate your acceptance by signing, dating and returning a copy of this letter to me.

Sincerely,

Authorized and Accepted by:

Authorized Signature

By: _____

Name: _____

Title: _____

Date: _____

Software Product Schedule:

The software listed below may be supplied as read only memory, disk, magnetic tape, printed material, or in other forms, and includes related materials.

Software Product No.	QTY	Product Description

ATTACHMENT C

INSTALLATION SCHEDULE

The Installation Schedule showing the achievement of all major project milestones, tasks and associated responsibilities included in the Scope of Work will be created using Microsoft Project and inserted behind this cover page.

ATTACHMENT D
SUPPORT SERVICES AGREEMENT

HONEYWELL INTERNATIONAL INC.

Honeywell Building Solutions

SERVICE AGREEMENT

Project Name:

Proposal Number:

Date:

Agreement Number:

(PROVIDER)

Honeywell International Inc. ("Honeywell")

(CUSTOMER)

("Customer")

Service Location Name:

Service Location Address:

Scope of Work: HONEYWELL HBS shall provide the following equipment and services ("the Work") in accordance with the attached work scope documents and terms and conditions, which form a part of this Agreement.

- ☐ Preferred Temperature Control Services
- ☐ Flex Temperature Control Services
- ☐ Preferred Automation Maintenance Services
- ☐ Flex Automation Services
- ☐ Preferred Fire Alarm Maintenance Services
- ☐ Fire Alarm Test and Inspect Services
- ☐ Preferred Security System Inspect Services
- ☐ Flex Security System Services
- ☐ Preferred Mechanical Maintenance Services
- ☐ Flex Mechanical Maintenance Services
- ☐ ServiceNet™ Remote Monitoring and Control Services
- ☐ EBI Services
- ☐ Energy Auditing and Analysis Services
- ☐ Online Services
- ☐ Advanced Support

- ☐ Site Services
- ☐ Honeywell Energy Analysis Reporting
- ☐ Air Filter Services
- ☐ Water Treatment Services
- ☐ Critical Parts Stocking
- ☐ Thermography Services
- ☐ Emergency Generator Services
- ☐ In Suite Services
- ☐ Remote Monitoring/Radionics
- ☐ Indoor Air Quality Auditing Services
- ☐ Service Management Software
- ☐ FM Worksite
- ☐ Energy Guarantee Special Provisions
- ☐ Other/Special Provisions _____
- ☐ Honeywell Users Group

Contract Term:

____ years from the Effective Date. Customer Honeywell
(INITIALS)

Contract Effective Date:

Price for Year 1:

Payment Terms:

____ dollars, ____ (plus applicable taxes).

☐ Sales Tax will be invoiced separately

☐ Use Tax is included in the Price

☐ This sale is tax exempt

Renewal: The Contract Term will automatically be renewed for consecutive terms of one year unless terminated by either party by the delivery of written notice to the other at least sixty (60) days prior to the end of such term, or unless terminated as provided herein.

Acceptance: This proposal and the pages attached shall become an Agreement in accordance with Article 13 below and only upon signature below by an authorized representative of HONEYWELL and CUSTOMER.

Accepted by:

HONEYWELL INTERNATIONAL INC.

CUSTOMER: ____

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Proposal Number _____

Honeywell Service Agreement (Rev. 07/07)

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Proposal Number _____
Honeywell Service Agreement (Rev. 07/07)

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PART A. Standard Terms and Conditions

1. WORKING HOURS

1.1 Unless otherwise stated, all labor and services under this Agreement will be performed during the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday, excluding federal holidays. If for any reason CUSTOMER requests HONEYWELL to furnish any labor or services outside of the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday (or on federal holidays), any overtime or additional expenses, such as repairs or material costs not included in this Agreement, will be billed to and paid by CUSTOMER.

2. TAXES

2.1 CUSTOMER agrees to pay the amount of any new or increased taxes or governmental charges upon labor or the production, shipment, sale, installation, or use of equipment or software which become effective after the date of this Agreement. If CUSTOMER claims any such taxes do not apply to transactions covered by this Agreement, CUSTOMER shall provide HONEYWELL with a tax exemption certificate acceptable to the applicable taxing authorities.

3. PROPRIETARY INFORMATION

3.1 All proprietary information (as defined herein) obtained by CUSTOMER from HONEYWELL in connection with this Agreement will remain the property of HONEYWELL, and CUSTOMER will not divulge such information to any third party without prior written consent of HONEYWELL. The term "proprietary information" means written information (or oral information reduced to writing), or information in machine-readable form, including but not limited to software supplied to CUSTOMER which HONEYWELL deems proprietary or confidential and characterizes as proprietary at the time of disclosure to CUSTOMER by marking or labeling the same "Proprietary", "Confidential", or "Sensitive". The CUSTOMER shall incur no obligations hereunder with respect to proprietary information which: (a) was in the CUSTOMER'S possession or was known to the CUSTOMER prior to its receipt from HONEYWELL; (b) is independently developed by the CUSTOMER without the utilization of such confidential information of HONEYWELL; (c) is or becomes public knowledge through no fault of the CUSTOMER; (d) is or becomes available to the CUSTOMER from a source other than HONEYWELL; (e) is or becomes available on an unrestricted basis to a third party from HONEYWELL or from someone acting under its control; (f) is received by CUSTOMER after notification to HONEYWELL that the CUSTOMER will not accept any further information.

3.2 CUSTOMER agrees that HONEYWELL may use nonproprietary information pertaining to the Agreement, and the work performed under the Agreement, for press releases, case studies, data analysis, promotional purposes, and other similar documents or statements to be publicly released, as long as HONEYWELL submits any such document or statement to CUSTOMER for its approval, which will not be unreasonably withheld.

4. INSURANCE OBLIGATIONS

4.1 HONEYWELL shall, at its own expense, carry and maintain in force at all times from the effective date of the Contract through final completion of the work the following insurance. It is agreed, however, that HONEYWELL has the right to insure or self-insure any of the insurance coverages listed below:

Commercial General Liability Insurance to include contractual liability, products/completed operations liability with a combined single limit of USD \$2,000,000 per occurrence. Such policy will be written on an occurrence form basis;

(b) If automobiles are used in the execution of the Contract, Automobile Liability Insurance with a minimum combined single limit of USD \$2,000,000 per occurrence. Coverage will include all owned, leased, non-owned and hired vehicles;

(c) Where applicable, "All Risk" Property Insurance, including Builder's Risk Insurance, for physical damage to property which is assumed in the Contract. Workers' Compensation Insurance Coverage A - Salaried limits and Coverage B-Employer's Liability Insurance with limits of USD \$1,000,000 for bodily injury each accident or disease.

4.2 Prior to the commencement of the Contract, HONEYWELL will furnish evidence of said insurance coverage in the form of a Memorandum of Insurance which is accessible at: <http://honeywell.com/nao>. All insurance required in this Article will be written by companies with a rating of no less than "A-, XII" by A.M. Best or equivalent rating agency. HONEYWELL will endeavor to provide a thirty (30) day notice of cancellation or non-renewal to the Customer. In the event that a self-insured program is implemented, HONEYWELL will provide adequate proof of financial responsibility.

5. HAZARDOUS SUBSTANCES, MOLD AND UNSAFE WORKING CONDITIONS

5.1 "Hazardous substance" includes all of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site, or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, and (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health, habitability of a Site, or the environment.

5.2 "Mold" means any type or form of fungus or biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, ascents, or by-products produced or released by any of the foregoing. This includes any related or any such conditions caused by third parties.

5.3 "Covered Equipment" means the equipment covered by the Services to be performed by HONEYWELL under this Agreement, and is limited to the equipment included in the respective work scope attachments.

5.4 CUSTOMER has not observed or received notice from any source (formal or informal) of (a) Hazardous Substances or Mold, either airborne or on or within the walls, floors, ceilings, heating, ventilation and air conditioning systems, plumbing systems, structure, and other components of the Site, or within furniture, fixtures, equipment, containers or pipelines in a Site; or (b) conditions that, to CUSTOMER'S knowledge, might cause or promote accumulation, concentration, growth or dispersion of Hazardous Substances or Mold on or within such locations.

5.5 HONEYWELL is not responsible for determining whether the Covered Equipment or the temperature, humidity and ventilation settings used by CUSTOMER, are appropriate for CUSTOMER and the Site except as specifically provided in an attached Work Scope Document.

5.6 If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by HONEYWELL or others and provide an unsafe condition for the performance of the work or Services, the discovery of the condition shall constitute a cause beyond HONEYWELL'S reasonable control and HONEYWELL shall have the right to cease the work or Services until the area has been made safe by CUSTOMER or CUSTOMER'S representative, at CUSTOMER'S expense. HONEYWELL shall have the right to terminate this Agreement if CUSTOMER has not fully remediated the unsafe condition within sixty (60) days of discovery.

5.7 CUSTOMER represents that CUSTOMER has not retained HONEYWELL to discover, inspect, investigate, identify, prevent or remediate Hazardous Substances or Mold or conditions caused by Hazardous Substances or Mold.

5.8 TO THE FULLEST EXTENT ALLOWED BY LAW, CUSTOMER SHALL INDEMNIFY AND HOLD HONEYWELL HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES, DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES, CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER THE BREACH OF THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION THE EXISTENCE OF MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, OR THE OCCURRENCE OR EXISTENCE OF THE SITUATIONS OR CONDITIONS DESCRIBED IN THIS SECTION, WHETHER OR NOT CUSTOMER PROVIDES HONEYWELL ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS. THIS INDEMNIFICATION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

5.9 CUSTOMER is responsible for the containment of any and all refrigerant stored on or about the premises. CUSTOMER accepts all responsibility for and agrees to indemnify HONEYWELL against any and all claims, damages, or causes of action that arise out of the storage, consumption, loss and/or disposal of refrigerant, except to the extent HONEYWELL has brought refrigerant onsite and is directly and solely negligent for its mishandling.

6. WARRANTY AND LIMITATION OF LIABILITY

6.1 HONEYWELL will replace or repair any product HONEYWELL provides under this Agreement that fails within the warranty period (one) 1 year because of defective workmanship or materials, except to the extent the failure results from CUSTOMER negligence, or from fire, lightning, water damage, or any other cause beyond the control of HONEYWELL. This warranty applies to all products HONEYWELL provides under this Agreement, whether or not manufactured by HONEYWELL. The warranty is effective as of the date of CUSTOMER acceptance of the product or the date CUSTOMER begins beneficial use of the product, whichever occurs first.

6.2 THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE, AND HONEYWELL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, EQUIPMENT, AND MATERIALS PROVIDED HEREUNDER. HONEYWELL SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, ARISING FROM, OR RELATING TO, THIS LIMITED WARRANTY OR ITS BREACH.

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6.3 HONEYWELL makes no representation or warranty, express, implied or otherwise, regarding Hazardous Substances or Mold. HONEYWELL shall have no duty, obligation or liability, all of which CUSTOMER expressly waives, for any damage or claim, whether known or unknown, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services, in whole or in part due to or arising from any investigation, testing, analysis, monitoring, cleaning, removal, disposal, abatement, remediation, decontamination, repair, replacement, relocation, loss of use of building, or equipment and systems, or personal injury, death or disease in any way associated with Hazardous Substances or Mold.

7. INDEMNITY

7.1 HONEYWELL agrees to indemnify and hold CUSTOMER's consultants, agents and employees harmless from all claims for bodily injury and property damages to the extent such claims result from or arise under HONEYWELL'S negligent actions or willful misconduct in its performance of the Work required under this Agreement, provided that nothing in this Article shall be construed or understood to alter the limitations of liability set forth in this agreement, or the indemnification set forth in Paragraph 5.4. Such indemnity obligation is valid only to the extent CUSTOMER gives HONEYWELL immediate notice in writing of any such claims and permits HONEYWELL, through counsel of its choice, to answer the claims and defend any related suit. Notwithstanding the foregoing, CUSTOMER agrees that HONEYWELL will not be responsible for any damages caused by Mold or any other fungus or biological material or agent, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services.

8. LIMITATION OF LIABILITY

8.1 IN NO EVENT SHALL HONEYWELL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, MOLD, MOISTURE OR INDOOR AIR QUALITY, OR OTHERWISE, ARISING FROM, RELATING TO, OR CONNECTED WITH THE SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS PROVIDED HEREUNDER.

8.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF A PORTION OF THE SERVICES INVOLVES THE INSTALLATION AND/OR MAINTENANCE OF SYSTEMS ASSOCIATED WITH SECURITY AND/OR THE DETECTION OF AND/OR REDUCTION OF RISK OF LOSS ASSOCIATED WITH FIRE, HONEYWELL'S TOTAL LIABILITY ARISING OUT OF OR AS A RESULT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THIS AGREEMENT.

9. EXCUSABLE DELAYS

9.1 HONEYWELL is not liable for damages caused by delay or interruption in Services due to fire, flood, corrosive substances in the air, strike, lockout, dispute with workmen, inability to obtain material or services, commotion, war, acts of God, the presence of Hazardous Substances or Mold, or any other cause beyond HONEYWELL'S reasonable control. Should any part of the system or any equipment be damaged by fire, water, lightning, acts of God, the presence of Hazardous Substances or Mold, third parties or any other cause beyond the control of HONEYWELL, any repair or replacement will be paid for by CUSTOMER. In the event of any such delay, date of shipment or performance will be extended by a period equal to the time lost by reason of such delay, and HONEYWELL will be entitled to recover from CUSTOMER its reasonable costs, overhead, and profit arising from such delay.

10. PATENT INDEMNITY

10.1 HONEYWELL shall, at its expense, defend or, at its option, settle any suit that may be instituted against CUSTOMER for alleged infringement of any United States patents related to the hardware or software manufactured and provided by HONEYWELL under this Agreement ("the equipment"), provided that: a) such alleged infringement consists only in the use of such equipment by itself and not as part of, or in combination with, any other devices, parts or software not provided by HONEYWELL hereunder; b) CUSTOMER gives HONEYWELL immediate notice in writing of any such suit and permits HONEYWELL, through counsel of its choice, to answer the charge of infringement and defend such suit; and c) CUSTOMER gives HONEYWELL all needed information, assistance and authority, at HONEYWELL'S expense, to enable HONEYWELL to defend such suit.

10.2 If such a suit has occurred, or in HONEYWELL'S opinion is likely to occur, HONEYWELL may, at its election and expense: a) obtain for CUSTOMER the right to continue using such equipment; b) replace, correct or modify it so that it is not infringing; or c) remove such equipment and grant CUSTOMER a credit therefor, as depreciated.

10.3 In the case of a final award of damages in any such suit, HONEYWELL will pay such award. HONEYWELL will not, however, be responsible for any settlement made without its written consent.

10.4 THIS ARTICLE STATES HONEYWELL'S TOTAL LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT BY THE HARDWARE MANUFACTURED AND PROVIDED BY HONEYWELL HEREUNDER.

11. SOFTWARE LICENSE

11.1 All software provided in connection with this Agreement shall be licensed and not sold. The end user of the software will be required to sign a license agreement with provisions limiting use of the software to the equipment provided under these specifications, limiting copying, preserving confidentiality, and prohibiting transfer to a third party. Licenses of this type are standard for computer-based equipment of the type covered by this Agreement. CUSTOMER shall be expected to grant HONEYWELL access to the end user for purposes of obtaining the necessary software license.

12. DISPUTE RESOLUTION

12.1 With the exception of any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of fire and/or security systems, the Parties agree that any controversy or claim between HONEYWELL and CUSTOMER arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration in a neutral venue, conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any award rendered by the arbitrator will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of systems associated with security and/or the detection of, and/or reduction of risk of loss associated with fire will be resolved in a court of competent jurisdiction.

ARTICLE 13. ACCEPTANCE

13.1 This proposal and the pages attached shall become an Agreement only upon signature below by HONEYWELL and CUSTOMER. The terms and conditions are expressly limited to the provisions hereof, including Honeywell's Standard Terms and Conditions attached hereto, notwithstanding receipt of, or acknowledgment by, HONEYWELL of any purchase order, specification, or other document issued by CUSTOMER. Any additional or different terms set forth or referenced in CUSTOMER'S purchase order are hereby objected to by HONEYWELL and shall be deemed a material alteration of these terms and shall not be a part of any resulting order.

ARTICLE 14. MISCELLANEOUS

14.1 This Agreement represents the entire Agreement between CUSTOMER and HONEYWELL for the Work described herein and supersedes all prior negotiations, representations or Agreements between the Parties related to the work described herein.

14.2 None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order or other document unilaterally issued by CUSTOMER that relates to the subject matter of this Agreement. This Agreement may be amended only by written instrument signed by both Parties.

14.3 This Agreement is governed by the law of the State where the work is to be performed.

14.4 Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon HONEYWELL and CUSTOMER, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14.5 CUSTOMER may not assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of HONEYWELL. HONEYWELL may assign its right to receive payment to a third party.

PART B. Special Terms and Conditions

15. COVERAGE

15.1 CUSTOMER agrees to provide access to all equipment covered by this Agreement. HONEYWELL will be responsible to inspect and clean all primary equipment incidental to the operation of the mechanical, control, automation, and life safety system(s) as arranged with CUSTOMER'S representative.

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15.2 It is understood that the repair, replacement, and emergency service provisions apply only to the Equipment included in the attached List of Covered Equipment. Repair or replacement of non-maintainable parts of the system such as, but not limited to, downwork, piping, shell and tube (for boilers, evaporators, condensers, and chillers), unit cabinets, boiler refractory material, heat exchangers, insulating material, electrical wiring, hydraulic and pneumatic piping, structural supports and other non-moving parts, is not included under this Agreement. Costs to repair or replace such non-maintainable parts will be the sole responsibility of CUSTOMER.

15.3 HONEYWELL will not reload software, nor make repairs or replacements necessitated by reason of negligence or misuse of the Equipment by persons other than HONEYWELL or its employees, or caused by lightning, electrical storm, or other violent weather or by any other cause beyond HONEYWELL'S control. HONEYWELL will provide such services at CUSTOMER'S request and at an additional charge. CUSTOMER is entitled to receive HONEYWELL'S then current preferred-CUSTOMER labor rates for such services.

15.4 HONEYWELL may install diagnostic devices and/or software at HONEYWELL'S expense to enhance system operation and support. Upon termination of this Agreement, HONEYWELL may remove these devices and return the system to its original operation. CUSTOMER agrees to provide, at its sole expense, connection to the switched telephone network for the diagnostic devices and/or software.

15.5 HONEYWELL will review the Services delivered under this Agreement on an annual basis, unless otherwise noted.

15.6 This Agreement assumes that the systems and/or Equipment included in the attached List of Covered Equipment are in maintainable condition. If repairs are necessary upon initial inspection or initial seasonal start-up, repair charges will be submitted for approval. Should these charges be declined, those non-maintainable items will be eliminated from coverage under this Agreement and the price adjusted accordingly.

15.7 In the event that the system or any equipment component thereof is altered, modified, changed or moved, this Agreement may be immediately adjusted or terminated, at HONEYWELL'S sole option. HONEYWELL is not responsible for any damages resulting from such alterations, modifications, changes or movement.

15.8 HONEYWELL is not responsible for maintaining a supply of, furnishing and/or replacing lost or needed chlorofluorocarbon (CFC) based refrigerants not otherwise required under this Agreement. CUSTOMER is solely responsible for the cost of material and labor of any such refrigerant not otherwise provided for under this Agreement at current market rates.

15.9 Maintenance, repairs, and replacement of Equipment parts and components are limited to restoring to proper working condition. HONEYWELL is not obligated to provide replacement software, equipment, components and/or parts that represent a significant betterment or capital improvement to CUSTOMER'S system(s) hereunder.

15.10 Unless otherwise specified, CUSTOMER retains all responsibility for maintaining LANs, WANs, leased lines and/or other communication mediums incidental or essential to the operation of the system(s) or Equipment found included in the attached List of Covered Equipment.

15.11 CUSTOMER will promptly notify HONEYWELL of any malfunction in the system(s) or Equipment covered under this Agreement that comes to CUSTOMER'S attention.

16. TERMS OF PAYMENT

16.1 CUSTOMER will pay or cause to be paid to Honeywell the full price for the Services as specified on the first page of this Agreement. Honeywell will submit **SELECT PROPER BILLING FREQUENCY** invoices to Customer in advance for Services to be performed during the subsequent billing period, and payment shall be due within twenty (20) days after CUSTOMER'S receipt of each such invoice. Payments for Services past due more than five (5) days shall accrue interest from the due date to the date of payment at the rate of one and one-half percent (1.5%) per month, compounded monthly, or the highest legal rate then allowed. CUSTOMER will pay all attorney and/or collection fees incurred by HONEYWELL in collecting any past due amounts.

16.2 **Price Adjustment.** HONEYWELL may annually adjust the amounts charged for the Services provided.

17. TERMINATION

17.1 CUSTOMER may terminate this Agreement for cause if HONEYWELL defaults in the performance of any material term of this Agreement, or fails or neglects to carry forward the Services in accordance with this Agreement, after giving HONEYWELL written notice of its intent to terminate. If, within thirty (30) days following receipt of such notice, HONEYWELL fails to cure or perform its obligations, CUSTOMER may, by written notice to HONEYWELL, terminate this Agreement.

17.2 HONEYWELL may terminate this Agreement for cause (including, but not limited to, CUSTOMER'S failure to make payments as agreed herein) after giving CUSTOMER written notice of its intent to terminate. If, within thirty (30) days following receipt of such notice, CUSTOMER fails to make the payments then due, or otherwise fails to cure or perform its obligations, HONEYWELL may, by written notice to CUSTOMER, terminate this Agreement and recover from CUSTOMER payment for Services performed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable overhead, profit and applicable damages.

17.3 **Cancellation.** This Agreement may be canceled at HONEYWELL'S option in the event HONEYWELL equipment on CUSTOMER'S premises is destroyed or substantially damaged. Likewise, this schedule may be canceled at CUSTOMER'S option in the event CUSTOMER'S premises are destroyed. In the event of such cancellation, neither party shall be liable for damages or subject to any penalty, except that CUSTOMER will remain liable for Services rendered to the date of cancellation.

18. DEFINITIONS

18.1 "Covered Equipment" means the equipment and software covered by the Services to be performed by HONEYWELL under this Agreement, and is identified in the respective work scope attachments under the "List of Covered Equipment".

18.2.1 "Services" means those services and obligations to be undertaken by HONEYWELL in support of, or to maintain, the Covered Equipment, as more fully detailed in the attached work scope document(s), which are incorporated herein.

ARTICLE 19. APPROPRIATIONS AND ESSENTIAL USE

19.1 CUSTOMER reasonably believes that sufficient funds can be obtained to make all payments for the initial term, as described in Paragraph 3.1, of the Agreement. CUSTOMER hereby covenants that it shall do all things lawfully within its power to obtain funds from which such payments may be made, including making provisions for such payments, to the extent necessary, in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. It is CUSTOMER'S intent to make the payments for the initial term if funds are legally available therefore and in that regard CUSTOMER represents that (a) the use of the Equipment and Services is essential to its proper, efficient and economic functioning or to the services that is provided to its citizens; (b) CUSTOMER has an immediate need for and expects to make immediate use of substantially all the Equipment and Services, which need is not temporary or expected to diminish in the foreseeable future; and (c) the Equipment and Services shall be used by CUSTOMER only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority.

19.2 In the event no funds or insufficient funds are appropriated and budgeted for the acquisition, retention or operation of the Equipment and Services under the Agreement, then CUSTOMER shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify HONEYWELL (and its assignee, if any) of such occurrence. The Agreement shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to CUSTOMER of any kind, except as to (i) the portions of the payments herein agreed upon for which funds have been appropriated and budgeted or are otherwise available, and (ii) CUSTOMER'S other obligations and liabilities under the Agreement relating to, accruing or arising prior to such termination. In the event of such termination, CUSTOMER agrees to peacefully surrender possession of any Equipment (provided by HONEYWELL under the Agreement) to HONEYWELL (or its assignee, if any) on the date of such termination, packed for shipment in accordance with manufacturer's specifications and eligible for manufacturer's maintenance, and freight prepaid and insured to any location in the continental United States designated by HONEYWELL, all at CUSTOMER'S expense. HONEYWELL (or its assignee, if any) may exercise all available legal and equitable rights and remedies in regaining possession of any Equipment provided by HONEYWELL under this Agreement.

19.3 Notwithstanding the foregoing, CUSTOMER agrees (a) that if the Agreement is terminated in accordance with the preceding paragraph, CUSTOMER shall not purchase, lease or rent equipment which performs the same functions as, or functions taking the place of, those performed by the Equipment, nor shall it contract for any services similar to or that take the place of the Services provided under the Agreement, and shall not permit such functions to be performed by its own employees or by any agency or entity affiliated with or hired by CUSTOMER for the balance of the fiscal period in which such termination occurs or the next succeeding fiscal period thereafter, and (b) that it shall not, during the initial term, give priority in the application of funds to any other functionally similar equipment or services.

Energy Guarantee Special Provisions

These Special Provisions are incorporated herein by reference and made a part of the Honeywell International Inc., Automation and Control Solutions Agreement.

1.1 Incorporated Documents - Attachment F, Attachment G, and Exhibits to Attachment G are hereby made an integral part of this SUPPORT SERVICES AGREEMENT, insofar as same is applicable to the work of the Energy Guarantee Auditing and Analysis Services, as if specifically written herein, and unless otherwise hereinafter specified.

1.2 Energy Guarantee Performance Period Auditing Activities - In coordination with, or in addition to, any Energy Auditing and Analysis Services, HONEYWELL will perform Measurement & Verification (M&V) activities as described in Attachment G.

1.3 Remote Diagnostics - CUSTOMER shall allow HONEYWELL to perform remote diagnostics on all equipment associated with the Energy Savings Guarantee for operational compliance with manufacturer's specifications, HONEYWELL specifications, requirements of Attachment F, and requirements of Attachment G.

HONEYWELL may install diagnostic devices at HONEYWELL's expense to monitor and/or enhance system operation and support. Upon termination of this Agreement, HONEYWELL may remove these devices and return the system to original operation.

1.4 Potential-To-Save - Verification of an ECM's potential to generate the proposed energy cost avoidance is satisfied upon CUSTOMER's signing of Attachment J or an equivalent Delivery and Acceptance Certificate. (See Attachment F - Definitions: "Option A".

1.5 Energy Purchasing Alternatives - It is understood that there is no requirement for HONEYWELL to perform evaluations of energy purchasing alternatives or perform rate negotiations under this contract.

Switching from the respective electric and natural gas local distribution companies (LDCs) to the respective marketers/brokers/suppliers (SUPPLIERS) for the commodity portion of gas and electricity will be the result of Contract(s) between CUSTOMER and SUPPLIER(s). HONEYWELL does not assure the provision of gas or electricity, and all incentives and payments associated with the Contract(s) between CUSTOMER and SUPPLIER(s) are the responsibility of the Parties to that Contract.

1.6 Utility Rebates - It is understood that all utility rebates and/or refunds are the result of an agreement between CUSTOMER and the utility company and HONEYWELL assumes no responsibility for either obtaining said rebates and/or refunds or for the quantity of said rebates and/or refunds.

It is further understood that any evaluation and presentation of options by HONEYWELL for potential utility rebates and credits available to CUSTOMER from utility companies is limited to those identified during contract negotiation and during installation. Assisting the CUSTOMER in securing identified rebates is understood to be a construction and installation task and is not part of these on-going services.

1.7 Recommendations - It is understood that HONEYWELL will use its best professional judgment in evaluating energy use characteristics, but assumes no responsibility for financial performance related to any recommendations.

1.8 CUSTOMER Responsibilities for Documentation - It is the responsibility of the CUSTOMER to provide to the M&V Specialist, at minimum, on a quarterly basis, except as modified below:

1.8.1 Verification that equipment installed to perform the ECMs has been properly maintained, including but not limited to provision of maintenance records.

1.8.2 Current status of the buildings (i.e., occupancy level and use, hours of operation, etc.).

1.8.3 Records of CUSTOMER initiated changes in equipment setpoints, start/stop conditions, usage patterns.

1.8.4 Records of CUSTOMER initiated changes in operation of mechanical-electrical systems, which may impact the ECMs.

1.8.5 Records regarding addition or deletion of equipment or building structure, which may impact the ECMs or the building energy consumption.

1.8.6 Copies of all utility information including monthly utility bills and utility summary data on a *monthly basis*, and access to utility accounts through an authorization by the CUSTOMER to the utility providers to allow the release of data to a HONEYWELL representative.

1.9 **CUSTOMER Responsibilities for Notification** – HONEYWELL and CUSTOMER division of responsibilities and risk allocation is described in Attachment F and Attachment G.

It is the responsibility of the CUSTOMER to notify HONEYWELL of all changes in production, occupancy, building load, conditioned building area, equipment operation, and scheduling, etc. from the baseline period. Deviation from the baseline period will result in Baseline Adjustments to normalize the Base Year energy use to Current Year conditions. It will be the responsibility of the CUSTOMER to investigate and correct any reported deficiencies in the current operations in the buildings that impact the ECMs.

1.10 **CUSTOMER Responsibilities for Maintenance** – During the term of this Agreement, for all equipment provided or modified as per Attachment A – Scope of Work, the CUSTOMER shall perform on-going maintenance and accomplish component replacement and equipment repairs in accordance with manufacturer's standards and practices and take all reasonable measures to insure the equipment is operating at full efficiency. Component replacement and equipment repairs must be accomplished in a timely fashion. Additionally, CUSTOMER shall insure such equipment is operated at all times in accordance with applicable manufacturer's specifications, HONEYWELL specifications, and the requirements of Attachments F and G contained herein. For all non-HONEYWELL maintenance actions, CUSTOMER shall document and make available to HONEYWELL maintenance dates and tasks accomplished, the start date and duration of all deficient equipment operation and the subsequent corrective action and/or repair dates. Failure of the CUSTOMER to operate the equipment per the specifications, repair any deficiencies in a timely manner, and perform the ongoing maintenance functions in accordance with the standards and practices during the Guarantee period will allow HONEYWELL to adjust the Guarantee accordingly.

CUSTOMER shall replace any failed equipment or component no longer warranted by HONEYWELL or a HONEYWELL subcontractor, with equipment or components of equal or greater efficiency value than installed by HONEYWELL, for the full contract guarantee term.

1.11 **Energy Cost Avoidance** – Energy Cost avoidance may also include, but is not limited to, savings from demand charges, power factor correction, taxes, ratchet charges, rate changes and other utility tariff charges that are reduced as a result of the HONEYWELL involvement to the extent permitted by the Agreement.

1.12 **Exclusions** – The following are specifically excluded from this agreement.

1.12.1 xxx.

1.12.2 xxx.

Energy Guarantee Auditing and Analysis Services

1.1 Scope - HONEYWELL will implement Energy Guarantee Auditing and Analysis Services for CUSTOMER'S facilities, energy conservation measures (ECMs), and/or utility meters in coordination with Attachment F - Energy Guarantee and Attachment G - Schedule of Savings. Attachment G, as used herein, includes the Exhibits to Attachment G. HONEYWELL will perform the services outlined in Section 1.4.

List of Covered Facilities, Meters, ECMs by Service Offering:

(a)	(b)	(c)	(d)
Facility	LDC-Meter #/ Utility Type	ECMs (list only ECMs associated with meter listed in column (b))	Related M&V Offering Subsection

1.2 Coverage - This Agreement includes all labor, travel, and expenses to perform the services and frequency described in Section 1.4. Services not explicitly described in Section 1.4, including CUSTOMER Guarantee Responsibilities, are not included. It is understood that it will be the responsibility of the CUSTOMER to investigate and correct any deficiencies not covered under the SUPPORT SERVICES AGREEMENT.

1.3 Incorporated Documents - The Energy Guarantee Special Provisions, Attachment F - Energy Guarantee, Attachment G - Schedule of Savings, and Exhibits to Attachment G are hereby made an integral part of this SUPPORT SERVICES AGREEMENT, insofar as same is applicable to the work of the Energy Auditing and Analysis Services, as if specifically written herein, and unless otherwise hereinafter specified.

1.4 M&V Offerings - In coordination with section 1.1, HONEYWELL will perform the Measurement & Verification (M&V) offerings checked below:

☐ 1.4.1 Retrofit Isolation Energy Audit for Option A Verified ECMs - HONEYWELL will provide Option A energy guarantee auditing services as detailed in Attachment F, Attachment G, and Exhibits to Attachment G for specific Energy Conservation Measures (ECMs) identified in Attachment G and/or Exhibits to Attachment G as using Option A methodologies for Measurement and Verification. HONEYWELL will provide this one-time determination of the quantity of energy avoidance of the CUSTOMER'S facility for the First Guarantee Year only. Option A methods will be applied on an ECM specific basis (i.e., isolated to the retrofit) and Energy Cost Avoidance for a Guarantee Year will be quantified and summarized on an ECM basis. After the ECM's potential-to-save has been verified (section 1.3) HONEYWELL shall either stipulate the quantity of cost avoidance or determine the cost avoidance from engineering calculations and measurement of specific variables. Utility bill auditing (Option C) and reconciliation of Option A results to utility meter bill data is not included. The Option A/B retrofit isolation method was selected by the CUSTOMER to provide an economical reconciliation method and to minimize the interactive effects on the determination of cost avoidance due changes to the site or facilities from the baseline conditions.

HONEYWELL will provide a single (1) reporting submission of the determination of energy avoidance for the First Guarantee Year. The Energy Avoidance quantified in the First Guarantee Year will be stipulated as the annual Energy Avoidance for each Guarantee Year of the remaining contract term.

The Energy Cost Avoidance for every year of the performance period is quantified based on the Energy Avoidance determined in the First Guarantee Year multiplied by the applicable energy rate as defined in Attachment G. It is the responsibility of the CUSTOMER to provide copies of utility bills for the meters affected by the ECMs, for the purposes of calculating the current utility prices only. If no utility data is provided within 2 weeks of CUSTOMER's receipt, the baseline energy costs as defined in Attachment G will be used.

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Work Coverage: _____

Term Coverage: _____

Option A Audit Report section will be submitted: ☐ 1-Time Only ☐ Quarterly
☐ Semi-Annually ☐ Annually

☐ **1.4.2 Energy Advisory Report-Level 1 (No Travel/ No On-Site Services)** - HONEYWELL will provide a report advisory and qualitative in its description based on material provided by the CUSTOMER to HONEYWELL as described below. The intent of the report is to describe deficiencies in the current operations in the buildings and their possible impact on the ECMs to the extent possible via CUSTOMER provided documents only. All travel and on-site services are excluded unless a Level-2 offering is included. It will be the responsibility of the CUSTOMER to investigate and correct the reported deficiencies. It will be the responsibility of the CUSTOMER to provide to the M&V specialist:

1. Verification that equipment installed to perform the ECMs has been properly maintained, including but not limited to provision of maintenance records.
2. Current status of the buildings (i.e., occupancy level and use, hours of operation, ownership, etc.).
3. Records of CUSTOMER initiated changes in equipment set points, start/stop conditions, usage patterns.
4. Records of CUSTOMER initiated changes in operation of mechanical systems, which may impact the ECMs.
5. Records regarding addition or deletion of equipment or building structure, which may impact the ECMs or the building energy consumption.
6. Copies of monthly utility bills and utility summary data on a *monthly* basis, and access to utility accounts through an authorization by the CUSTOMER to the Utility to allow the release of data to a Honeywell representative.

Work Coverage: _____

Term Coverage: _____

Advisory reports will be submitted: ☐ Quarterly ☐ Semi-Annually ☐ Annually.

☐ **1.4.3 Energy Advisory Report-Level 2 (With Travel & On-Site Services)** - In addition to the Level 1 Energy Advisory Report offering, HONEYWELL will conduct walk-through observations of the ECMs noted under Work Coverage for this section. It will be the responsibility of the CUSTOMER to investigate deficiencies beyond the contracted site visit frequency. It will be the responsibility of the CUSTOMER to correct the reported deficiencies.

The report will be limited to information that can be inferred from non-intrusive observations made during the allotted time for the walk-through observation and from the documents provided by the CUSTOMER to HONEYWELL per Level 1 Energy Advisory Report offering. During the walk through, Honeywell will:

1. Verify through visual observation that each ECM is still installed.
2. Verify to the limits of visual observation that each ECM is still functional. Additional verification will be performed via service records provided per section 1.4.2.
3. Record current manual set points and manual settings. Record changes in the operation, control sequences and control set points of the ECMs from original installed conditions.
4. Record observations about the current status of the building (i.e. occupancy, use), compare to CUSTOMER records, and compare against the contractual baseline and required post-retrofit operating conditions.
5. Record observed addition or deletion of site equipment, which may impact the ECMs or the building energy consumption and compare to CUSTOMER records.
6. Record observations regarding other changes on-site that may impact the ECMs or the building energy consumption.

Site walk-through observations will be conducted: ☐ Quarterly ☐ Semi-Annually ☐ Annually.

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Site walk-through observations are limited to no more than: _____ day(s) per year,
and limited to _____ day(s) per trip.

Work Coverage: _____

Term Coverage: _____

☐ **1.4.4 Retrofit Isolation Energy Audit for Option B Verified ECMs** - HONEYWELL will provide *Option B* energy guarantee auditing services as detailed in Attachment F, Attachment G, and Exhibits to Attachment G for specific Energy Conservation Measures (ECMs) identified in Attachment G and/or Exhibits to Attachment G as using *Option B* methodologies for Measurement and Verification to quantify the derived Energy Cost Avoidance of the CUSTOMER's facility. *Option B* methods will be applied on an ECM specific basis (i.e., isolated to the retrofit) and Energy Cost Avoidance for a Guarantee Year will be quantified and summarized on an ECM basis. After the ECM's potential-to-save has been verified (section 1.3) HONEYWELL shall determine the cost avoidance from the engineering calculations in Exhibit G-1 and *on-going* measurements of specific variables defined below. Utility bill auditing (*Option C*) is not included and reconciliation of *Option B* results to utility meter bill data is not included. The *Option B* retrofit isolation method was selected by the CUSTOMER to provide an economical reconciliation method and to minimize the interactive effects on the determination of cost avoidance due changes to the site or facilities from the baseline conditions.

It is the responsibility of the CUSTOMER to provide copies of utility bills for the meters affected by the ECMs, for the purposes of calculating the current utility prices only. If no utility data is provided within 2 weeks of CUSTOMER's receipt, the baseline energy costs as defined in Attachment G will be used.

Work Coverage: _____

Location	ECM	Variable Measured	Unit of Measure	Measurement Frequency	Measuring Device	Comments
Hospital D-Wing	HHWP VSD	Water Pressure Delta	Delta PSIG	30 minute interval	Stand alone dP data logger	CUSTOMER to mail to Hwyl 4 times per year
Hospital D-Wing	HHWP VSD	Amperage draw	Amperes	15 minute window to match utility	Handheld amp clamp meter	Power (kW) estimated @ 233 Volts & pF=0.83

Term Coverage: _____

Option B Audit Report section will be submitted: ☐ Quarterly ☐ Semi-Annually ☐ Annually

☐ **1.4.5 Utility Bill Energy Audit for Option C verified ECMs** - HONEYWELL will provide *Option C* energy guarantee auditing services as detailed in Attachment F, Attachment G, and Exhibits to Attachment G for specific Energy Conservation Measures (ECMs) identified in Attachment G and/or Exhibits to Attachment G as using *Option C* methodologies for Measurement and Verification to quantify the derived Energy Cost Avoidance of the CUSTOMER's facility. Under *Option C* services, HONEYWELL will analyze CUSTOMER'S energy use and costs against an "established baseline" described in Attachment G and Exhibits to Attachment G. HONEYWELL will use energy auditing software to track monthly facility costs, energy consumption, and Energy Cost Avoidance and to quantify and report on changes in energy usage due to changes in billing periods and weather. HONEYWELL will adjust the baseline for changes in energy usage due to changes in variables including, but not limited to billing periods, weather, production, occupancy, building load, conditioned building area, equipment operation, and scheduling methodologies etc. as defined in Attachment F and G. These routine and non-routine baseline adjustments will be calculated using industry-standard engineering calculations. As applicable per Attachment F and G, HONEYWELL will adjust the energy cost baseline for changes in the unit cost of energy.

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- ☐ Rate Structure Analysis - HONEYWELL will analyze CUSTOMER'S utility Rate Structures against an established baseline Rate Structure per Attachments F and G.
- ☐ Recommendations - HONEYWELL will recommend alterations or changes in operation to achieve energy savings.
- ☐ Billing Errors - HONEYWELL will identify and assess billing errors. If HONEYWELL identifies utility billing errors, HONEYWELL will provide reasonable efforts to work with CUSTOMER and the Utility to have the errors corrected and obtain applicable credits and/or refunds on CUSTOMER'S account. It is understood that all utility credits and/or refunds are the result of an agreement between CUSTOMER and the Utility, and HONEYWELL assumes no responsibility for obtaining said credits and/or refunds. HONEYWELL will not provide extended negotiation services with the utility on behalf of the CUSTOMER under this contract, but will provide such services under an amended or new contract..
- ☐ Budget Analysis for Utilities - HONEYWELL will analyze CUSTOMER'S energy use and cost results against budgetary projections and assist CUSTOMER in developing utility budgets.
- ☐ Energy Rebates - HONEYWELL will evaluate and present options for potential energy rebates and credits available to CUSTOMER from energy suppliers or other sources, and assist CUSTOMER in securing identified rebates. However, it is understood that all utility rebates and/or refunds are the result of an agreement between CUSTOMER and the utility company and HONEYWELL assumes no responsibility for either obtaining said rebates and/or refunds or for the quantity of said rebates and/or refunds. Honeywell does not guarantee rebates. This service is limited to rebates available during the project contract negotiation and installation time period. No on-going rebate services are available.

Term Coverage: _____

Work Coverage: _____

Audit Record ID & Qty	Location	Utility Type	Unit of Measure	Meter #	Vendor - Account #
1	Elementary School - A	Electric	kWh	E000-345-678	LDC - PSE&G 3456
2	Elementary School - A	Electric	kWh	E000-345-678	Commodity - All Energy #567WR
3	Elementary School - A	Electric	kW	E000-345-678	LDC - PSE&G 3456
4	Elementary School - A	Nat. Gas	Ccf	TR0-456-987	LDC - SCG #444-55-678
5	Elementary School - A	Nat. Gas	Ccf	TR0-456-987	Commodity - Venture One #987234
6	Elementary School - A	Oil #2	Gallons	1,000 gallon tank	Existed pre-retrofit and removed in post-retrofit

Option C Audit Report section will be submitted: ☐ Quarterly ☐ Semi-Annually
☐ Annually ☐ 1-Time Only

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Honeywell Energy Analysis Report (HEAR) Services

1.1 Scope – HONEYWELL will implement an Energy Analysis reporting service for CUSTOMER'S facilities and meters listed below. HONEYWELL will perform the services outlined herein.

List of Covered Facilities and Meters

Facility	Utility Type	Utility Co. / Account #	Meter #

1.2 Coverage – This Agreement includes all labor, travel, and expenses to perform the services and frequency described in this HEAR offering. Services not explicitly described herein are not included. It is understood that it will be the responsibility of the CUSTOMER to investigate and correct any deficiencies not covered under a SUPPORT SERVICES AGREEMENT.

1.3 Honeywell Energy Analysis Report (HEAR) – HONEYWELL will analyze CUSTOMER'S energy use, rate structures, and costs against an established baseline, present observations, and recommend alterations or changes in operation to support energy saving strategies. This "established baseline" will be mutually agreed to by both parties and shall either be provided to HONEYWELL by CUSTOMER or shall be based upon HONEYWELL'S established and standard energy accounting methodologies. The baseline may be updated periodically to reflect facility improvements and changes, as well as provide a more current comparison of energy usage. HONEYWELL will use energy analysis software to track monthly utility costs and energy consumption, and will also quantify and report on changes in energy usage that may be due to changes in billing periods and weather.

HONEYWELL will analyze energy costs and usage against budgetary projections provided by CUSTOMER and assist CUSTOMER in developing utility budgets.

If HONEYWELL identifies utility billing errors, HONEYWELL will provide reasonable efforts to work with CUSTOMER and the Utility to have the errors corrected and obtain applicable credits and/or refunds on CUSTOMER'S account. It is understood that all utility credits and/or refunds are the result of an agreement between CUSTOMER and the Utility, and HONEYWELL assumes no responsibility for obtaining said credits and/or refunds. HONEYWELL will not provide extended negotiation services with the utility on behalf of the CUSTOMER under this contract, but will provide such services under an amended or new contract.

CUSTOMER is responsible for providing copies of utility bills for the meters listed above on a monthly basis, and/or allow HONEYWELL access to utility accounts through an authorization by CUSTOMER to the Utility to release utility data to a Honeywell representative.

Honeywell Energy Analysis Reports will be submitted:

☐ Quarterly ☐ Semi-Annually ☐ Annually

☐ **1.3.1 Optional Site Visit** – HONEYWELL will visit CUSTOMER'S site, review HEAR and recommend alterations or changes in operation. Site walk-through observations will be limited – per trip – to no more than: _____ day(s)

Site visits by HONEYWELL will occur:

☐ Quarterly ☐ Semi-Annually ☐ Annually

1.4 Limitations – It is understood that HONEYWELL assumes no responsibility for financial performance related to any recommendations associated with this HEAR offering.

1.4.1 The HEAR is not a measurement and verification plan to reconcile an energy savings performance contract (ESPC) guarantee. The 'baseline' used in a HEAR is not the same baseline used for an ESPC guarantee and does not include guarantee-baseline adjustments. As such, the HEAR does not model realized cost avoidance versus a guarantee.

ATTACHMENT D
SUPPORT SERVICES AGREEMENT
